

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Richard Ahearn Capell, a/k/a Richard A. Capell, ) Civil Action No.:3:15-cv-416-MGL

Plaintiff, )

v. )

**ORDER AND OPINION**

State of South Carolina, Governor Nikki Haley, )  
Allen Wilson, State OIG, Gloria Tyler, and )  
DHEC, )

Defendants. )

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Plaintiff Richard Ahearn Capell (“Plaintiff”), proceeding *pro se* and in forma pauperis, brought this action alleging a claim pursuant to the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, et seq. (“ADA”). Plaintiff sues the State of South Carolina, Governor Nikki Haley, Allen Wilson, State OIG, Gloria Tyler, and DHEC. (ECF No. 1.) The matter is before the Court for review of the Report and Recommendation of the United States Magistrate Judge recommending that this action be dismissed without prejudice and without issuance and service of process. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). The Court reviews the Report and Recommendation only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416

F.3d 310, 315 (4th Cir. 2005) (stating that "in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.") (citation omitted).

The Magistrate Judge filed the Report and Recommendation on February 17, 2015. On February 23, 2015, Plaintiff filed a doctor's note dated January 15, 2015, indicating that he might undergoing evaluation for surgery and referencing impending court dates. (ECF No. 14.) Plaintiff wrote "will be going to Ohio" on the doctor's note but did not request an extension of time for filing objections to the Report and Recommendation. In an abundance of caution, this Court liberally construed Plaintiff's notice of request for protection from court appearances as a motion for extension of time and granted Plaintiff until March 19, 2015 to file any objections to the Report and Recommendation. Instead of objections, Plaintiff filed a motion to "force compliance or grant me consent to die with dignity." (ECF No. 17.) In the absence of objections, the Court is not required to give any explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198, 199 (4th Cir.1983). Moreover, a failure to object waives appellate review. *Wright v. Collins*, 766 F.2d 841, 845–46 (4th Cir.1985).

Even after liberally construing Plaintiff's filing as objections and conducting a *de novo* review, the Court finds no basis to reject the findings and recommendations set forth in the Report. Recognizing the Plaintiff is proceeding *pro se*, the Court has carefully reviewed Plaintiff's complaint and Plaintiff's recently filed motion and has determined that the pleadings simply do not allege a claim cognizable in this Court. Thus, after a thorough review of the record in this case and the Report and Recommendation of the Magistrate Judge pursuant to the standard set forth above, the Court adopts and incorporates the Report and Recommendation herein. It is therefore ORDERED that Plaintiff's complaint be dismissed, *without prejudice*.

IT IS SO ORDERED.

/s/Mary G. Lewis  
United States District Judge

March 23, 2015  
Columbia, South Carolina

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NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified of the right to appeal this Order within thirty days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.